

JUN 22 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ADRIAN DIAZ GONZALEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-72931

Agency No. A95-313-144

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 12, 2006^{**}

Before: KLEINFELD, PAEZ, and BERZON, Circuit Judges

Adrian Diaz Gonzalez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' decision affirming an immigration judge's denial of his application for cancellation of removal. Diaz contends that

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the Board and the IJ erred in concluding that his departure to Mexico in 1994 interrupted his continuous physical presence in the United States. We have jurisdiction under 8 U.S.C. § 1252, and we grant the petition.

An alien who departs the United States pursuant to an administrative voluntary departure in lieu of deportation or removal proceedings interrupts his physical presence in this country. *Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 972 (9th Cir. 2003) (per curiam). After the Board issued its decision, we held, however, that an alien's brief return to his native country for family reasons does not interrupt his continuous physical presence even if he is stopped and turned away at the border when he attempts to return.

Diaz testified that he went to Mexico for two weeks in April 1994. When he attempted to return to the United States, he was caught at the border and was detained for about seven hours. He testified that he "signed a document for voluntary departed." When the immigration judge asked, "And you chose to voluntary depart instead of being deported?" Diaz answered, "Yes."

On this record, we cannot determine whether Diaz received administrative voluntary departure under threat of deportation. We therefore grant the petition and remand for further proceedings concerning the nature of his contact with

immigration officials in 1994 and such further proceedings as may be appropriate.

See Ibarra-Flores v. Gonzales, 439 F.3d 614, 620 (9th Cir. 2006).

PETITION FOR REVIEW GRANTED; REMANDED.